

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Andres Gomez,

Plaintiff,

v.

Schug Winery LLC, a California
Limited Liability Company;

Defendants.

Case No.

**Complaint for Damages and
Injunctive Relief for Violations
of:** American's With Disabilities
Act; Unruh Civil Rights Act

**NOT RELATING TO A
CONSTRUCTION-RELATED
BARRIER AS DEFINED IN CAL.
CIV. CODE § 55.3**

Plaintiff Andres Gomez ("Plaintiff") complains of Schug Winery LLC, a California Limited Liability Company ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a visually-impaired individual and a member of a protected class of persons under the Americans with Disabilities Act. Plaintiff Talkback or similar software to navigate websites and applications on electronic devices. Plaintiff is legally blind¹ and cannot use an electronic device without

¹ Plaintiff uses the terms "visually-impaired" or "blind" interchangeably to refer to individuals, including himself, who meet the legal definition of blindness. (visual acuity of 20/200 or worse.) Some individuals who meet these criteria have no vision, others have limited vision.

1 assistance of screen-reader software (“SRS”)

2 2. Defendant Schug Winery LLC (“Schug Winery LLC”) owned or
3 operated Schug Carneros Estate Winery located in Sonoma County,
4 California, in March 2021 and August 2021.

5 3. Defendant Schug Winery LLC owns or operates Schug Carneros Estate
6 Winery located in Sonoma County, California, currently.

7 4. Defendant Schug Winery LLC owned or operated Schug Carneros
8 Estate Winery website, with a root domain of: <https://schugwinery.com/> and
9 all related domains, sub-domains and/or content contained within it,
10 (“Website”) in March 2021 and August 2021.

11 5. Defendant Schug Winery LLC owns or operates Schug Carneros Estate
12 Winery’s Website currently.

13 6. Plaintiff does not know the true names of Defendants, their business
14 capacities, their ownership connection to the property and business, or their
15 relative responsibilities in causing the access violations herein complained of,
16 and alleges a joint venture and common enterprise by all such Defendants.
17 Plaintiff is informed and believes that each of the Defendants herein, is
18 responsible in some capacity for the events herein alleged or is a necessary
19 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
20 the true names, capacities, connections, and responsibilities of the Defendants
21 are ascertained.

22
23 **JURISDICTION & VENUE:**

24 7. The Court has subject matter jurisdiction over the action pursuant to 28
25 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
26 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (“ADA”)

27 8. This court has supplemental jurisdiction over Plaintiff’s non-federal
28 claims pursuant to 28 U.S.C. § 1367 because Plaintiff’s Unruh claims are

1 formed from the same case and/or controversy and are related to Plaintiff's
2 ADA claims. A violation of the ADA is a violation of Unruh. (Cal. Code §51(f).

3 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b). Defendant
4 is subject to personal jurisdiction in this District due to its business contacts
5 with the District, and a substantial portion of the complained of conduct
6 occurred in this District.

7
8 **FACTUAL ALLEGATIONS:**

9 10. Plaintiff is a legally blind person and a member of a protected class
10 under the ADA. Plaintiff is proficient with and uses SRS to access the internet
11 and read internet content on electronic devices.

12 11. Plaintiff cannot use an electronic device without the assistance of
13 screen reader software. ("SRS").

14 12. Schug Winery LLC operates privileges, goods or services out of a
15 physical location in California. These services are open to the public, places of
16 public accommodation, and business establishments.

17 13. The Website is a nexus between Schug Winery LLC's customers, and the
18 terrestrial based privileges, goods or services offered by Schug Winery LLC.

19 14. Schug Winery LLC offers websites and digital booking as some of the
20 facilities, privileges, and advantages offered by Defendants to patrons of
21 Schug Winery LLC in connection with their patronage at Schug Winery LLC.

22 15. Among the services offered include: details about the wines and Schug
23 Winery LLC itself, location and contact information; Schug Winery LLC
24 policies; information about wine on sale, deals and promotions without any
25 ambiguity as to the amenities that would be available to the patron.

26 16. Plaintiff was a prospective customer who wished to access Defendant's
27 goods and services of Schug Winery LLC.

28 17. Plaintiff visited the Website in March 2021 and August 2021 with the

1 intent get information about wines sold at the winery and wine tasting tours.

2 18. When Plaintiff attempted to navigate the Website, Plaintiff encountered
3 numerous accessibility design faults that prevented him from navigating the
4 site successfully using SRS. Investigation into his experience revealed barriers,
5 including, but not limited to:

6 a. Images on the website lack a text equivalent readable by
7 SRS.

8 b. The website contains form elements that are not identified
9 with functional text readable by SRS.

10 c. The website contains script elements that are not
11 identified with functional text readable by SRS.

12 19. These inaccessible elements rendered the ostensibly “accessible”
13 elements inaccessible as a result of difficulty and confusion navigating the
14 numerous inaccessible elements.

15 20. Currently, the defendants either fail to provide an accessible website or
16 Defendants have failed to maintain in working and useable conditions those
17 website features required to provide ready access to persons with disabilities.

18 21. Despite multiple attempts to access the Website using Plaintiff’s
19 electronic device, Plaintiff has been denied the full use and enjoyment of the
20 facilities, goods and services offered by Defendants as a result of the
21 accessibility barriers on the Website.

22 22. Plaintiff personally encountered accessibility barriers and has actual
23 knowledge of them.

24 23. By failing to provide an accessible website, the defendants denied
25 Plaintiff full and equal access to the facilities privileges or advantages offered
26 to their customers.

27 24. Plaintiff has been deterred from returning to the Website as a result of
28 these prior experiences.

1 25. The failure to provide accessible facilities created difficulty and
2 discomfort for the Plaintiff.

3 26. If the website had been constructed equally accessible to all individuals,
4 Plaintiff would have been able to navigate the Website and find information on
5 houses on sale.

6 27. Additionally, Plaintiff is a tester in this litigation and seeks future
7 compliance with all federal and state laws. Plaintiff will return to the Website
8 to avail himself of its goods and/or services and to determine compliance with
9 the disability access laws once it is represented to him that Schug Winery LLC
10 and Website are accessible.

11 28. Plaintiff is currently deterred from doing so because of Plaintiff's
12 knowledge of the existing barriers and uncertainty about the existence of yet
13 other barriers on the Website. If the barriers are not removed, Plaintiff will
14 face unlawful and discriminatory barriers again.

15 29. The barriers identified above violate easily accessible, well-established
16 industry standard guidelines for making websites accessible to people with
17 visual-impairments that use SRS to access websites. Given the prevalence of
18 websites that have implemented these standards and created accessible
19 websites, it is readily achievable to construct an accessible website without
20 undue burden on Schug Winery LLC or a fundamental alteration of the
21 purpose of the Website.

22 30. Compliance with W3C Web Content Accessibility Guidelines
23 ("WCAG") 2.0 AA standards are a viable remedy for these deficiencies and a
24 standard that has been adopted by California courts for website accessibility.

25 31. It's been established that failure to remove these inaccessible conditions
26 violates the ADA and California law and requiring compliance with industry
27 access standards is a remedy available to the plaintiff.

28 32. The Website was intentionally designed, and based on information and

1 belief, it is the Defendants' policy and practice to deny Plaintiff access to the
 2 Website, and as a result, denies the goods and services that are otherwise
 3 available to patrons of Schug Winery LLC.

4 33. Due to the failure to construct and operate the website in line with
 5 industry standards, Plaintiff has been denied equal access to Defendant's
 6 winery and the various goods, services, privileges, opportunities and benefits
 7 offered to the public by Schug Winery LLC.

8 34. Given the nature of the barriers and violations alleged herein, the
 9 plaintiff alleges, on information and belief, that there are other violations and
 10 barriers on the website, and/or at Schug Winery LLC, that relate to his
 11 disability. In addition to the barriers he personally encountered, Plaintiff
 12 intends to seek removal of all barriers on the Website that relate to his
 13 disability. See *Doran v. 7-Eleven* (9th Cir. 2008) 524 F.3d 1034 (holding that
 14 once a plaintiff encounters one barrier, they can sue to have all barriers that
 15 relate to their disability removed regardless of whether they personally
 16 encountered the barrier).

17 35. Plaintiff will amend the complaint, to provide further notice regarding
 18 the scope of the additional demanded remediation in the event additional
 19 barriers are uncovered through discovery. However, please be on notice that
 20 the plaintiff seeks to have all barriers related to his disability remedied.

21
 22 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 23 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 24 Defendants.) (42 U.S.C. section 12101, et seq.)

25 36. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 26 again herein, the allegations contained in all prior paragraphs of this
 27 complaint. Schug Winery LLC is a public accommodation with the definition
 28 of Title III of the ADA, 42 USC § 12181.

1 37. The website provided by the Defendant is a service, privilege or
2 advantage and extension of Schug Winery LLC physical presence and
3 terrestrial services.

4 38. When a business provides services such as a website, it must provide an
5 accessible website.

6 39. Here, an accessible website has not been provided. A failure to provide
7 an accessible website is unlawful discrimination against persons with
8 disabilities.

9 40. Under the ADA, it is an act of discrimination to fail to ensure that the
10 privileges, advantages, accommodations, facilities, goods and services of any
11 place of public accommodation is offered on a full and equal basis by anyone
12 who owns, leases, or operates a place of public accommodation. *See*: 42 U.S.C.
13 § 12182(a). Discrimination is defined, inter alia, as follows: “A failure to make
14 reasonable modifications in policies, practices, or procedures, when such
15 modifications are necessary to afford goods, services, facilities, privileges,
16 advantages, or accommodations to individuals with disabilities, unless the
17 accommodation would work a fundamental alteration of those services and
18 facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).”

19 41. Here, the failure to ensure that the accessible facilities were available
20 and ready to be used by the plaintiff is a violation of the law.

21 42. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
22 set forth and incorporated therein, Plaintiff requests relief as set forth below.
23

24 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
25 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
26 Code § 51-53.)

27 43. Plaintiff repleads and incorporates by reference, as if fully set forth
28 again herein, the allegations contained in all prior paragraphs of this

1 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
2 that persons with disabilities are entitled to full and equal accommodations,
3 advantages, facilities, privileges, or services in all business establishment of
4 every kind whatsoever within the jurisdiction of the State of California. Cal.
5 Civ. Code §51(b).

6 44. The Unruh Act provides that a violation of the ADA is a violation of the
7 Unruh Act. *Cal. Civ. Code* § 51(f).

8 45. Defendants’ acts and omissions, as herein alleged, have violated the
9 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
10 rights to full and equal use of the accommodations, advantages, facilities,
11 privileges, or services offered.

12 46. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
13 discomfort or embarrassment for the plaintiff, the defendants are also each
14 responsible for statutory damages, i.e., a civil penalty. *Cal. Civ. Code* §
15 55.56(a)-(c).

16 47. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
17 set forth and incorporated therein, Plaintiff requests relief as set forth below.

18
19 **PRAYER:**

20 Wherefore, Plaintiff prays that this Court award damages and provide
21 relief as follows:

22 1. A Declaratory Judgment that at the commencement of this action
23 Defendants were in violation of the requirements of the ADA due to
24 Defendants’ failures to take action to ensure that its Website was fully
25 accessible to and independently usable by blind and visually-impaired
26 individuals.

1 2. For equitable nominal damages for violation of civil rights. See
2 Uzuegbunam v. Preczewski, 141 S.Ct. 792 (2021) and any other equitable
3 relief the Court finds appropriate.

4 3. Pursuant to 42 U.S.C § 12181, a preliminary and permanent injunction
5 enjoining Defendants from violating the ADA with respect to its Website.

6 4. Damages under the Unruh Civil Rights Act § 51², which provides for
7 actual damages and a statutory minimum of \$4,000 for each offense.

8 5. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
9 to 42 U.S.C. § 12205; and *Cal. Civ. Code* § 52.

10
11 Dated: December 5, 2021

CENTER FOR DISABILITY ACCESS

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14 By: _____

15 Amanda Seabock, Esq.
16 Attorney for Plaintiff
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26 _____
27 ² Note: the plaintiff is not invoking section 55 of the California Civil Code and
28 is not seeking injunctive relief under the Disabled Persons Act at all.